tion 5 to the courts would be wholly inconsistent with the statutory scheme.

The decision below is supported by the weight of authority. *Neisloss* v. *Bush*, 293 F.2d 873, 878 (C.A. D.C.); *Chicago, South Shore & South Bend Railroad* v. *Monon Railroad*, 235 F. Supp. 984 (N.D. Ill.). The district court case relied upon by petitioner to support the right to bring a private suit (Pet. 13-14) did not involve a collateral attack upon an ICC order. *Most* v. *Alleghany Corp.*, CCH Fed. Sec. L. Rep., para. 92,583 (S.D.N.Y.), decided February 17, 1970. And, as the court of appeals noted, *Most* was decided "without benefit of Commission participation" (Pet. App. A17). Moreover, the district court's rationale in that case will not stand analysis. The complaint there rested on 28 U.S.C. 1337, which provides for district court jurisdiction of "any civil action * * * arising under any Act of Congress regulating commerce." But, as the court of appeals held here, although that statute "creates jurisdiction, it does not create a cause of action" (Pet. App. A14). Cf. *Montana-Dakota Power Co.* v. *Public Service Co.*, 341 U.S. 246; *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297; *Briggs Transfer Co.* v. *National Butter Co.*, 199 F. 2d 847 (C.A. 8).

Finally, the decision below does not conflict with *J. I. Case Co.* v. *Bank*, 377 U.S. 426, allowing certain private claims under the Securities Exchange Act. As the court of appeals observed (Pet. App. A18), *Borak* involved a broad statute granting district courts jurisdiction over "all suits in equity and actions at law brought to enforce any liability or duty

created" under the Act. As shown previously, the statute involved here contains no such authorization, and by its terms creates district court jurisdiction only upon complaint of the Commission.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1970.

APPENDIX

SERVICE DATE
April 28, 1969

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 24th day of April, 1969.

Finance Docket No. 23388

CHICAGO & NORTH WESTERN RAILWAY CO.—MERGER —CHICAGO GREAT WESTERN RAILWAY CO.

Finance Docket No. 23389

CHICAGO & NORTH WESTERN RAILWAY CO. STOCK AND ASSUMPTION OF OBLIGATION AND LIABILITY

Upon consideration of the record in the above-entitled proceedings including (1) the report and order of the Commission dated May 23, 1968, 333 I.C.C. 236; (2) the petition filed January 27, 1969, as last supplemented March 7, 1969, by B. F. Goodrich Company for leave to intervene and for reopening and reconsideration or, in the alternative, reopening and reconsideration on the Commission's own motion, with respect to said report and order; and (3) the reply to said petition filed January 31, 1969, as last supplemented March 17, 1969, with a trust agreement by Northwest Industries, Inc.; and

It appearing, That petitioner, as owner of 100 shares each of the stock of Northwest Industries, Inc., a noncarrier holding company which controls the Chicago and North Western Railway Company,

and of 100 shares of stock of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, seeks reconsideration of that portion of the said report and order in which Northwest Industries was subjected, under the provisions of section 5(3) of the act, to the extent of requiring it to make such periodic and special reports as we may hereinafter require pursuant to sections 20(1) and (2) of the act and jurisdiction was reserved for the purpose of determining whether Northwest Industries should be subjected to further regulation at a future date, to provide, in addition, that Northwest Industries be subjected to the provisions of section 20a(2) to (11) of the act, inclusive, which relate to issues of securities and assumption of liability of carriers;

It further appearing, That petitioner alleges that Northwest Industries has acquired a block of shares of petitioner's common stock and has announced an intention to offer petitioner's shareholders certain Northwest Industries securities in exchange for the stock held by petitioner's shareholders to the detriment of Northwest Industries' common carrier subsidiaries, which, it is alleged, under some circumstances may be caused to pay excessive dividends to aid Northwest Industries;

It further appearing, That on March 4, 1969, B. F. Goodrich Company acquired control of Motor Freight Corporation, an interstate motor carrier through acquisition of all the latter's common stock, that Northwest Industries, Inc., has stated that simultaneously with acquisition of control of B. F. Goodrich Company the stock of Motor Freight Corporation will be sold to a non-affiliated non-carrier, or, pending sale, complete control of such motor carrier will be placed in an independent voting trustee, that the Commission

has held in the past that the placing of stock in an independent voting trust, with necessary restrictions, constitutes divestiture of control thereof, see *Missouri Pacific Railroad Company—Control—Chicago & Eastern Illinois Railroad Company, et al.*, 327 I.C.C. 279; and

It further appearing, That good cause has been shown for petitioner's intervention in these proceedings, and for reopening these proceedings for the sole purpose of subjecting Northwest Industries, Inc. to the provisions of section 20(5) of the Interstate Commerce Act; but that no showing has been made that the proposed issuance of securities by Northwest Industries, complained of by petitioner, would adversely affect the common carrier subsidiaries of Northwest Industries or their ability to maintain transportation service; and that there has otherwise been presented no error of fact or law with respect to the decision arrived at by the Commission in its report and order aforesaid; wherefore;

It is ordered, That the petition be granted to the extent of permitting petitioner to intervene and become a party to these proceedings; that these proceedings be, and they are hereby, reopened for the sole purpose of subjecting Northwest Industries, Inc., to the provisions of section 20(5) of the Interstate Commerce Act, and that the petition in all other respects be, and it is hereby, denied, and that as hereby supplemented, the prior orders herein shall remain in full force and effect.

By the Commission.

H. NEIL GARSON
Secretary

(SEAL)

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